

GRIFFIN HAMERSKY LLP

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Scott A. Griffin

Michael D. Hamersky

Richard K. Milin

Counsel for NYAM, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	:
	: Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> ,	:
	: Case No. 17-10466 (SCC)
Debtors.	:
	: (Jointly Administered)

	:
DAVID MACGREEVEY, in his capacity as	:
PLAN ADMINISTRATOR,	: Adv. Pro. No. 17-01101 (SCC)
	:
Plaintiff,	:
	:
v.	:
	:
NYAM, LLC,	:
	:
Defendant	:
-----X	

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellants(s):

NYAM, LLC

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff

☒ Defendant

☐ Other (describe) _____

For appeals in a bankruptcy case and not an adversary proceeding.

☐ Debtor

☐ Creditor

☐ Trustee

☐ Other (describe) _____

Part 2: Identify the subject of this appeal

Describe the judgment, order, or decree appealed from: *Order Granting Plaintiff's Motion for Partial Summary Judgment* (Bankr. S.D.N.Y. Case No. 17-10466 (SCC)/Adv. Pro. Case No. 17-01101 (SCC)); [Adv. Pro. Docket No. 37])

1. State the date on which the judgment, order, or decree was entered: March 13, 2019

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. **Party:** David MacGreevey, **Attorney:** Pachulski Stang Ziehl & Jones LLP
in his capacity as Robert J. Feinstein
Plan Administrator Bradford J. Sandler
780 Third Avenue, 34th Floor
New York, NY 10017
Tel: (212) 561-7700

2. **Party:** NYAM, LLC **Attorney:** Griffin Hamersky LLP
Scott A. Griffin
Michael D. Hamersky
Richard K. Milin
420 Lexington Avenue, Suite 400
New York, NY 10170
Tel: (646) 998-5580

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. §158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☒ Appellant(s) elect to have the appeal heard by the District Court rather than by the Bankruptcy Appellate Panel:

Part 5: Sign below

By: /s/ Michael D. Hamersky
Signature of attorney for appellant(s) (or appellant(s)
If not represented by an attorney)

Date: March 26, 2019

Name, address, and telephone number of attorney
(or appellant(s) if not represented by an attorney:

Scott A. Griffin
Michael D. Hamersky
Richard K. Milin
Griffin Hamersky LLP
420 Lexington Avenue, Suite 400
New York, New York 10170
Telephone: (646) 998-5580

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in §304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

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Counsel for NYAM, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:
	: Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> ,	:
	: Case No. 17-10466 (SCC)
Debtors.	:
	: (Jointly Administered)
-----	:
	:
DAVID MACGREEVEY, in his capacity as	:
PLAN ADMINISTRATOR,	: Adv. Pro. No. 17-01101 (SCC)
	:
Plaintiff,	:
	:
v.	:
	:
NYAM, LLC,	:
	:
Defendant	:
-----	-X

NOTICE OF APPEAL

PLEASE TAKE NOTICE that NYAM, LLC, by and through its undersigned counsel, hereby files this notice of appeal pursuant to 28 U.S.C. § 158(a)(1), to the United States District Court for the Southern District of New York from the *Order Granting Plaintiff's Motion for Partial Summary Judgment*, dated March 13, 2019 (the "Summary Judgment Order"). A copy of the Summary Judgment Order is annexed hereto as Schedule "A". Appeal is taken from the each and every part of the Summary Judgment Order.

The names of all parties to the Summary Judgment Order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Party: David MacGreevey,
in his capacity as
Plan Administrator

Attorney: Pachulski Stang Ziehl & Jones LLP
Robert J. Feinstein
Bradford J. Sandler
780 Third Avenue, 34th Floor
New York, NY 10017
Tel: (212) 561-7700

Dated: New York, New York
March 26, 2019

GRIFFIN HAMERSKY LLP

By: /s/ Michael D. Hamersky
Michael D. Hamersky
Scott A. Griffin
Richard K. Milin
420 Lexington Ave, Suite 400
New York, New York 10170
Telephone: (646) 998-5580
Facsimile: (646) 998-5574

Counsel for Defendant, NYAM, LLC

Schedule A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
	:	
BCBG MAX AZRIA GLOBAL	:	Case No. 17-10466 (SCC)
HOLDINGS, LLC, et al.,	:	
	:	Jointly Administered
	:	
Debtors.	:	
-----X	:	
DAVID MACGREEVEY, in his capacity as	:	
PLAN ADMINISTRATOR,	:	Adv. Pro. No. 17-01101 (SCC)
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
NYAM, LLC,	:	
	:	
Defendant.	:	
-----X	:	

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

The matter having come before the Court on *Plaintiff's Motion for Partial Summary Judgment* (“Plaintiff's Summary Judgment Motion”) filed by David MacGreevey (the “Plaintiff”), solely in his capacity as plan administrator, and *Defendant NYAM, LLC'S Cross-Motion for Summary Judgment* (the “NYAM Summary Judgment Motion”, and together with Plaintiff's Summary Judgment Motion, the “Motions”); and the Court having considered the Motions, the declarations and other evidence submitted in support of the Motions, all responses to the Motions, and the arguments presented by counsel; and it appearing, for the reasons stated on the record at the March 5, 2019 hearing on the Motions (the “Hearing”), that good cause

exists to grant the relief requested in Plaintiff's Summary Judgment Motion; it is hereby¹

ORDERED that Plaintiff's Summary Judgment Motion is GRANTED; and it is further
ORDERED that NYAM's Summary Judgment Motion is denied for the reasons set forth on the
record of the Hearing; and it is further

ORDERED that NYAM is liable to the Plaintiff in the amount of \$675,000.00; and it is
further

ORDERED that NYAM's second affirmative defense of setoff is dismissed in its entirety;
and it is further

ORDERED that the Clerk of the Court is directed to enter judgment against NYAM in
the amount of \$675,000.00 plus interest at the federal judgment rate from the date when such
judgment becomes final and non-appealable, until paid in full; and it is further

ORDERED this Court shall retain jurisdiction to hear and determine all matters arising
from or related to the implementation of this Order and/or Judgment.

New York, New York
Dated: March 13, 2019

/S/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in Plaintiff's Summary Judgment Motion or, if not defined in the Motion, in the *Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment*.